

# WATER LINES

NEWS FROM THE WATER RESOURCES DIVISION  
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ♦ WINTER 1997



MISSION: TO PROVIDE THE MOST BENEFIT, THROUGH THE BEST USE, OF THE STATE'S WATER RESOURCES FOR THE PEOPLE OF MONTANA

## DEPARTMENT NEWS

### LEGISLATURE TO CONSIDER WATER ISSUES

THE 55TH SESSION OF THE MONTANA LEGISLATURE BEGAN MONDAY, JANUARY 6, IN HELENA. AMONG LEGISLATION TO BE CONSIDERED BY THE SESSION ARE A NUMBER OF BILLS RELATING TO WATER ISSUES.

The bills outlined below have all been formally introduced and are listed by their HB or SB number.

- **HB0071** - An act increasing the emergency loan cap from the renewable resource grant and loan program from \$1 million to \$10 million; amending section 85-1-605, MCA; and providing an immediate effective date.

- **HB0120** - An act providing for an additional exception to the upper Missouri River basin closure and amending section 85-2-343, MCA.

- **HB0283** - An act ratifying a reserved water rights compact between the U. S. Fish and Wildlife Service and the State of Montana.

- **HB0300** - An act appropriating money to the Department of Natural Resources and Conservation from the renewable resource grant and loan state special revenue account for a grant to the Glen Lake Irrigation District for needed repairs to Costich Dam, giving priority to this grant over those in HB0006, and providing an effective date.

- **SB0097** - An act generally revising the water laws to clarify that the Department of Natural Resources

and Conservation may issue water permits and change authorizations prior to the completion of an adjudication in a source of supply; clarifying that water reserved under state law is not synonymous with federal and Indian reserved water rights under federal law; amending sections 85-2-101, 85-2-102, 85-2-217, 85-2-228, 85-2-301, 85-2-302, 85-2-311, 85-2-313, 85-2-316, 85-2-321, 85-2-329, 85-2-331, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-401, and 85-2-402, MCA; and providing an immediate effective date and a retroactive applicability date.

- **SB0108** - An act generally revising water adjudication laws; allowing the water court to adjudicate abandonment of water rights; allowing a water judge to consider relevant evidence arising before or after July 1, 1973; providing for the water court to enter a temporary preliminary decree for any category of claim that requires adjudication; requiring

objections to be filed at the initial decree state; allowing claimants and objectors to amend their claims or objections; giving claimants an opportunity to file counter-objections; encouraging increased use of alternative dispute resolution; clarifying the process for administering water rights pending adjudication; amending sections 3-7-501, 85-2-227, 85-2-231, and 85-2-406, MCA; and providing an immediate effective date.

If you are interested in learning more details about a particular bill, such as its sponsor(s) and current status, please call (406) 444-5648 or 1-800-962-1729. ☺



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## EAST FORK ROCK CREEK REPAIRS NEARLY COMPLETE

**M**OST OF THE WORK ON THE EAST FORK ROCK CREEK DAM IN GRANITE COUNTY, NEAR PHILIPSBURG, MONTANA, HAS BEEN COMPLETED FOR THE WINTER.



Photo by Rick Bondy

The emergency at this state-owned dam, which is managed by the Department of Natural Resources and Conservation (DNRC), began June 29, 1996. The appearance of muddy water below the dam and subsequent development of a sinkhole on the dam's downstream face led to fears of dam failure and the evacuation of local stream users from an area extending 20 miles below the dam.

Rehabilitation included replacement of the main drain (with three heavy-duty plastic drains), construction of a chimney drain, installation of another subsurface drain, lining and reinforcement of a culvert, and reconstruction of the clay blanket. The estimated lifespan of the newly repaired pipes is up to 150 years.

The toe berm has been completed, and all planned components are in place. Some grading work on the upstream and downstream faces of the dam and final reclamation, including re-seeding, will be completed this spring and

summer. The monitoring and relief wells still need to be finished to their permanent levels at the tops of the wells. A funding request is being presented to the legislature for an emergency warning system, with plans to install the system this spring or summer.

With the monitoring wells, the drainage collection box, and weir in place, monitoring of the dam's "vital signs" has already begun. This winter the monitoring points will be measured weekly as long as access is possible. Once the road is open in the spring, weekly measurements will resume until the reservoir storage reaches 10,000 acre-feet. After that, more frequent measurements will be taken. When the reservoir elevation is rising significantly, more frequent visual observations and measurements will be conducted by a DNRC engineer.

DNRC is committed to an East Fork Rock Creek Dam rehabilitation project that provides for the safety of Rock Creek residents. From the onset of the crisis, the situation has been characterized by cooperation and shared information among DNRC, Granite County officials, additional agencies, and the public. ☺

## MONTANA'S CHIEF WATER JUDGE

**M**ONTANA'S CHIEF WATER JUDGE, C. BRUCE LOBLE, WAS APPOINTED TO THE POSITION ON MAY 14, 1990, BY SUPREME COURT CHIEF JUSTICE, JEAN TURNAGE.

As chief water judge, Loble administers the adjudication of Montana's existing water rights and oversees the duties and responsibilities of the Montana Water Court, which consists of four water judges, six water masters, and three clerks.



Judge C. Bruce Loble

Loble was born and raised in Helena and graduated from Helena Senior High in 1965. His family, producing five lawyers and three judges, is well known in the judicial field. His father served as district court judge in Helena for seven years until 1989, and his grandfather had held this same office for 12 years during the 1960s and early 1970s.

In 1969 Loble received his B.A. degree in history and political science from the University of Montana. After graduating from the University of Montana Law School in 1972, he served in the Armor Branch of the United States Army and was later employed in Washington, D. C., as a trademark attorney with the U. S. Patent Office. In 1973 he returned to Helena to practice law. For 17 years his practice focused on water rights and related natural resource areas and included administrative hearings before DNRC, water right trials before the District and Water Courts, and appeals to the Montana Supreme Court.

He has been a member of the State Bar of Montana since 1972 and chaired the Section on Land and Natural Resources from 1978 to 1982. Along with his father, he co-authored a *Law Review* article entitled "The Rocky Road to Water for Energy." He frequently lectures on the subject of water rights and water right litigation. He served as the chairman of the board of trustees for the Downtown Helena Business Improvement District and is also a past president and member of the board of directors for the Sons and Daughters of Montana Pioneers. He is a past president of both the Helena and Bozeman Kiwanis.

Judge Loble, his wife Sally, and two sons, Damon and Chandler, reside in Bozeman. ☺

## WATER RIGHT TRANSFERS

**FYI**

Do you keep forgetting to file a water right transfer certificate? Well, when a new user wants to appropriate seventy-six zillion acre-feet of water upstream from your newly acquired diversion or from a well located a half mile from your domestic well, the department will not know that you own the water right, nor will it know your address. You will not be notified of the proposed water use.

The law states that the transferrer (seller) or his agent shall file a water right transfer certificate. But there is no incentive to compel compliance. So, it's up to you as a buyer to march the seller to the county clerk and recorder's office to complete a water right transfer certificate. Sometimes this is impossible. In that case, you, as a buyer, can file a water right transfer certificate simply by producing the deed or contract for deed showing ownership of the property where the water is used. Water right transfer certificates are available at the county clerk and recorder's office and at the Water Resources Regional Office in your area. ☺



# WESTERN IRRIGATORS FACE LESS SUPPORTIVE POLICIES, INCREASING GLOBAL COMPETITION

FARMERS IRRIGATING IN THE WESTERN UNITED STATES FACE A HOST OF CHANGING CIRCUMSTANCES THAT WILL REQUIRE INNOVATIONS AND NEW ADAPTATIONS TO ENSURE PROSPERITY, ACCORDING TO A RECENT REPORT PUBLISHED BY THE COUNCIL FOR AGRICULTURAL SCIENCE AND TECHNOLOGY (CAST).

The report, titled *The Future of Irrigated Agriculture*, both describes the challenges confronting agricultural irrigators and identifies possible responses to change.

Dr. Henry Vaux, Associate Vice President for the University of California's Division of Agriculture and Natural Resources, chaired the CAST task force, which was drawn from CAST members, a consortium of some 30 professional scientific societies.

According to the report, competition for increasingly scarce water supplies to serve growing urban and environmental needs means that water will become less available for irrigation.

agriculture will be very different from the circumstances of today.

Tighter restrictions on water supplies, combined with the globalization of markets for food and fiber, which is expected to increase dramatically over the next ten years, are likely to create a very challenging economic environment for western growers, he said.

According to the report, change will not affect all regions of the West equally. Groundwater overdraft is most severe on the southern Great Plains, but is also significant in Arizona and California. Rapidly growing urban areas will compete with irrigated agriculture for relatively fixed supplies in California and Arizona.

Competition from environmental and instream uses will be pervasive, but most intense in the Pacific Northwest, where additional instream flows may be required to support anadromous fish, hydroelectric power generation, and navigation.

Native American claims on western water supplies are potentially very large, the report says, particularly in central and southern Arizona. While it is unlikely that many of these claims will be settled, settlements favoring Native Americans would likely result in the shifting of some irrigated agriculture in Arizona to reservation lands.

Settlements requiring instream flows could affect agricultural water supplies adversely in the Pacific Northwest and in specific locales elsewhere.

The report stresses that most of the laws and institutions governing and guiding irrigated agriculture were developed in another era and are ill suited to one in which premiums will be

placed on efficient water use, flexibility, and adaptability. These include:

- antiquated systems of state and federal water laws
- enforcement systems that create uncertainty about who is entitled to use how much
- legal systems that fail to provide incentives to manage water efficiently

- barriers to marketlike exchange of water rights
- water management jurisdictions that do not properly account for the various interdependencies in water use

In addition to this, the report says, existing rates of investment in agricultural research and development in the United States are below those in other developed countries, despite the fact that research and development will be critical if U.S. growers are to adapt and compete effectively in global markets.

Although many methods of adapting to water scarcity are already in use — such as the use of sophisticated irrigation technology and water management schemes to manage water more precisely and efficiently — an entirely new approach to water management is needed.

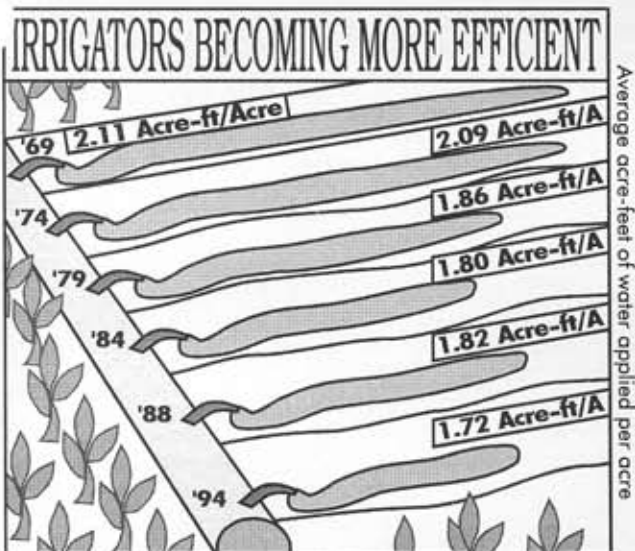
The ability of western growers to adapt successfully to future circumstances, said researchers involved in writing this report, will largely depend on the development of policies, as well as new institutions that are better suited to an era of water scarcity.

The report recommended adopting policies which create consistency and certainty in the regulatory environment in which irrigated agriculture operates, as well as policies which establish marketlike forces and incentives.

"Such policies can harness the entrepreneurial abilities of individual growers while mandating compliance with environmental, safety, and other regulations," says the report. Also needed, it says, "is appropriate protection for third parties" within a well-functioning water market, and policies which underwrite public investment in basic research and in research yielding benefits that cannot be appropriated exclusively by single growers.

"Research and development contributed significantly to the emergence of the U.S. agricultural economy as the strongest and most productive in the world," the report concludes. "Investment in research and development will be crucial in helping the nation maintain this position in an increasingly competitive global environment." ☐

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Source: Census of Agriculture, Farm and Ranch Irrigation Survey

"Western growers face intensifying competition for developed water supplies," said Vaux. "Growers in areas where groundwater is overdrawn will face increasing costs. Simultaneously, federal agricultural and water policies — which have been very generous to irrigated agriculture historically — are likely to become less favorable," he said.

In the next decade, Vaux said, the circumstances surrounding irrigated

# ADJUDICATION TASK FORCE

IN 1995, THE LEGISLATURE PASSED S.B. 387, WHICH DIRECTED THE CHIEF WATER JUDGE, C. BRUCE LOBLE, TO APPOINT A WATER ADJUDICATION ADVISORY COMMITTEE.

The purpose of the committee is to provide the Water Court, Montana Supreme Court, DNRC, and the legislature with methods to "improve and expedite" the adjudication process.

The committee was appointed in September 1995. It includes three nongovernmental attorneys (John E. Bloomquist, William Russell McElyea, and R. Mark Josephson) and three water users (Barry R. Hedrich, Eugene Manley, and Vernon L. Westlake). The committee also includes ex officio members C. Bruce Loble, Chief Water Judge; James J. DuBois, U. S. Department of Justice; Harley Harris, Assistant Montana Attorney General; Don MacIntyre, Chief Legal Counsel, DNRC; and Albert Stone, Professor of Law Emeritus, University of Montana.

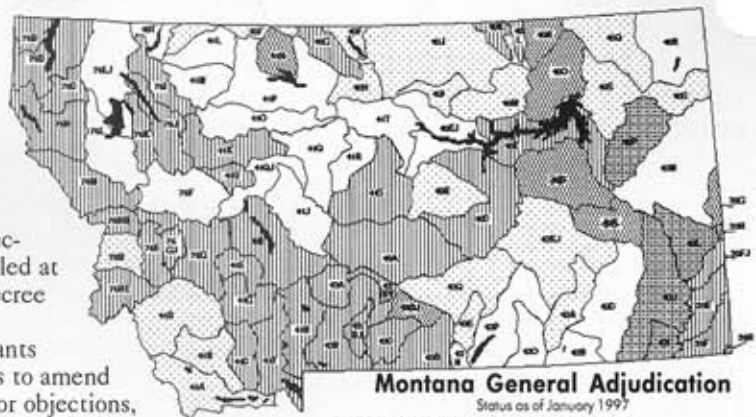
The committee met approximately once a month and submitted its report to the Montana Supreme Court on

October 1, 1996. Most of the committee's recommendations require changes to statutes that govern the adjudication process. The recommendations have been presented to the legislature as Senate Bill 108. A summary of the bill is:

- requires objections to be filed at the initial decree stage
- allows claimants and objectors to amend their claims or objections, and gives claimants an opportunity to file counter objections
- allows a water judge to consider relevant evidence arising before and after June 30, 1973
- clarifies the role of the district court and the water court in administering water rights during the pendency of the adjudication

Because of time limitations, the committee recommended further study in

several areas. They recommended further study of how exempt claims should be treated in the adjudication, whether there should be an institutional objector, how permits and changes should be combined



**Montana General Adjudication**

Status as of January 1997

- Basins being examined (17 basins)
- Temporary Preliminary Decree (35 basins + 2 subbasins)
- Preliminary Decree (7 basins)
- Final Decree (6 basins)

with the decrees to serve as guidance to water commissioners in distributing water, and the impact subdivisions may be having on the adjudication process.

The committee will likely reconvene after the 1997 legislature to continue its role of evaluating potential adjudication issues. ☉



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